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Dennis R. Patrick
CHAIRMAN

The Honorable Dennis R. Patrick
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC File Nos. BTCH-880322GF
and BTCH-880322GG
Your Log No. 1041

OFFICE CHIEF

AUG 19 2 42 PM '88

MASS. REC'D. BUREAU

Dear Mr. Chairman:

I am counsel for Listeners' Guild, Inc. (the "Guild"), which has filed a *Petition to Deny* the above-referenced applications for authority to transfer control of GAF Corporation ("GAF"), the parent of GAF Broadcasting Company, Inc., licensee of WNCN(FM), New York, New York. I am writing in response to a letter to you from Samuel J. Heyman, Chairman and Chief Executive Officer of GAF, dated August 1, 1988 (the "Heyman Letter"). (Mr. Heyman would become GAF's majority shareholder if the management group he leads acquires control of GAF as proposed.)

Although the Heyman Letter is styled as "an urgent request for Commission assistance in expediting Staff action," it is clearly an improper attempt to influence the Commission's resolution of the issues raised in the Guild's *Petition to Deny*. As such, it constitutes further evidence of Mr. Heyman's unfitness to be permitted to acquire sole control of WNCN.

Mr. Heyman's complaint of alleged Staff inaction is quite misleading. His suggestion that the Commission's Staff has been remiss in delaying action upon a complete and fully-pleaded record fails to disclose the fact that one of the critical issues addressed in the pleadings is whether the applications are premature and not ripe for Commission action, since they do not provide all of the information which

Honorable Dennis R. Patrick

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is also deceptive in failing to disclose that its complaint about alleged Staff delay comes just three business days after the filing of an amendment to the subject applications concerning the federal criminal indictment three weeks earlier of GAF and its Vice Chairman, James T. Sherwin, for alleged securities fraud.¹ Clearly, three days is not adequate for Staff consideration of the implications of the indictment;² it

¹ By mentioning the July 6 date of the indictment — but *not* the July 27 date of the amendment — Mr. Heyman misleadingly implies that the Staff has been guilty of what, if anything, has been his and GAF's delay. Moreover, GAF reportedly had disclosed the pending criminal investigation to the Securities and Exchange Commission in June as part of its preliminary proxy material for the proposed buyout, *see* Wall St. J., July 7, 1988, at 14. (Indeed, Mr. Heyman's and GAF's motives for seeking expedited consideration of extremely sketchy and incomplete applications may have included the hope that FCC approval could be secured before the criminal investigation — of which GAF had long been aware — ripened into indictments that would have to be disclosed to, and could lead to additional investigation by, the Commission.)

² The Commission clearly should avoid any prejudgment of the guilt or innocence of GAF and Mr. Sherwin of the criminal charges against them, yet, in order to discharge its own responsibilities to the public, it should not only be informed of the *fact* of the indictment, but also should be sufficiently informed of the nature of the charges and the underlying circumstances to be able to determine the effect, if any, that the criminal charges should have on its own public interest determination in connection with the applications before it. Neither the Heyman Letter nor the extremely brief July 27 amendment to the applications is sufficiently forthcoming to provide the Commission with such essential information. They summarize the indictment without mentioning that it charges the defendants, *inter alia*, with conspiring to falsify records, deceive and defraud investors, and make improper use of credit. No mention is made of the possibility that the Union Carbide transaction could expose GAF to a huge, even crippling, civil liability (it made a profit of some \$175 million which conceivably could have to be disgorged, *see* Wall St. J., June 23, 1988, at 3, 12, and it may be sued civilly by the SEC, *see* N.Y. Times, July 7, 1988, at D6); of the possible impact of the criminal case on the proposed leveraged buyout ("The investigation is likely to cloud the proposed \$1.27 billion leveraged buy-out of GAF," Wall St. J., June 23, 1988, at 3; "Traders on Wall Street appeared concerned that the leveraged buyout, scheduled to be completed in the fall, might be in some jeopardy." N.Y. Times, June 24, 1988, at D6); or of the possibility that Mr. Heyman will be charged as well ("Asked whether Mr. Heyman would be implicated in any related indictments, Rudolph W. Giuliani, the United States Attorney in Manhattan, said, 'I can't comment other than to say the investigation is continuing.'" N.Y. Times, July 7, 1988, at D6). Any or all of these matters could warrant investigation or action by the Commission.

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would not even be adequate to permit the Staff to formulate and transmit a request for further information.³

It is highly significant that Mr. Heyman fails to back up his claim of urgency with any reason that would justify the Commission in departing from its normal practices and procedures for processing applications for authority for transfers of control.⁴ Thus, while Mr. Heyman asserts that the procedure being used by GAF to secure shareholder approval makes it "important" to obtain a prompt Commission decision, he never offers an explanation of *why* this should be so.⁵ What is ostensibly an argument for the need for expedition is in reality a circumvention of the Commission's pleading rules in order to present a highly selective and misleading account, both of the procedure being employed by GAF and of the underlying proposed transaction.

Mr. Heyman's discussion of the proposed buyout of GAF is misleading in a number of respects. First of all, he attempts to portray the transaction as being fair and as enjoying support from the GAF fiduciaries who have considered it.⁶

³ Quite apart from the lack of adequate time for the Staff to make an informational request, Mr. Heyman's expression of willingness to provide any requested information is, of course, not an adequate substitute for his obligation to provide all information required by the Commission's Rules — a principle as applicable to the original application as to the recent amendment. Thus, the fact that "there has been no Commission request for additional information," Heyman Letter at 2, cannot justify expedited Commission action on what are premature and incomplete applications, nor is the date on which such applications are filed of any relevance.

ATTACHMENT 8

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AUG 19 1988

Federal Communications Commission
Office of the Secretary

VICTOR E. FERRALL, JR.
(202) 624-2535

August 19, 1988

The Honorable Dennis R. Patrick
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Mr. Chairman:

We are counsel to GAF Corporation. I am writing this letter in response to the August 12, 1988 from Mr. David M. Rice, attorney for Listeners' Guild, Inc. Mr. Rice's letter responded to an August 1 letter to you from Samuel J. Heyman, GAF's Chairman and Chief Executive Officer. In his August 1 letter, Mr. Heyman asked for assistance in expediting Staff action on the pending applications for authority to transfer control of GAF to a management group headed by him (BTCH-880322GF and BTCH-880322GG). Mr. Heyman is currently out of the country.

Mr. Rice's seven-page letter is typical of the bombast to which the Listeners' Guild has subjected GAF and its New York radio station, WNCN(FM) for the past eight years. There is no purpose in answering Mr. Rice's unfounded and false ad hominem attacks on Mr. Heyman.

Mr. Rice's letter is factually inaccurate, however, in two important respects. This letter is written to correct the record with respect to those facts.

1. Most importantly, notwithstanding Mr. Rice's contentions, the applications are complete and provide all required information needed by the Commission to make a decision. Contrary to Mr. Rice's assertions, the management group headed by Mr. Heyman not only made an offer to acquire GAF in a leveraged buy-out, but fully negotiated a merger agreement with the Special Committee of the GAF Board of Directors. A copy of the merger agreement negotiated by them is included in the applications. At the forthcoming meeting of shareholders, that merger agreement will be specifically before the shareholders for their approval.

The Honorable Dennis R. Patrick
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CROWELL & MORING

2. In his letter, Mr. Heyman did not "allege Staff delay" and did not ask for special treatment. The applications are complete and have been ripe for action for nearly three months. Mr. Heyman asked only that they be considered promptly and acted upon as any other complete applications which are ripe for decision would be.

I do agree with Mr. Rice's concluding statement: "The Guild does not object to prompt action by the Commission Staff -- once the Commission has a complete application before it so that it can give due consideration to all relevant and material issues." This is precisely what Mr. Heyman has asked the Commission to do.

In the event there are questions concerning this matter, please communicate with this office.

Very truly yours,


Victor E. Ferrall, Jr.

cc: Hon. Patricia Diaz Dennis
Hon. James H. Quello

ATTACHMENT 9

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MAR 31 1989

Before the

Federal Communications Commission
Office of the Secretary**Federal Communications Commission**

Washington, D.C. 20554

DUPLICATE

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In the Matter of the Application of)SAMUEL J. HEYMAN, et al., Shareholders of)
GAF CORPORATION,)For Consent to Transfer of Control of)
GAF BROADCASTING COMPANY, INC.,)
Licensee of Station WNCN (FM), New York,)
New York, to)NEWCO HOLDINGS, INC.)
.....)File No.
BTCH-880322GF

In the Matter of the Application of)

GAF BROADCASTING COMPANY,)

For Consent to Pro Forma Transfer of Control)
of GAF BROADCASTING COMPANY, INC.,)
Licensee of Station WNCN (FM), New York,)
New York, to)DORSET INC.)
.....)File No.
BTCH-880322GG

To: Chief, Mass Media Bureau

SUPPLEMENT TO PETITION FOR RECONSIDERATION

Listeners' Guild, Inc. (the "Guild"), by its attorney, hereby supplements the Guild's -
Petition for Reconsideration, filed December 14, 1988 (the "*Petition*"), which seeks
 reconsideration of a decision by the Chief, Mass Media Bureau, No. 8920-JO, issued November
 14, 1988 (the "*Decision*"), granting the above-captioned applications for consent to transfer of
 control of GAF Broadcasting Company, Inc., licensee of station WNCN (FM), New York, New
 York, and denying the Guild's *Petition to Deny* said applications. This pleading is filed in
 order to bring to the Commission's attention a number of events which have occurred since the

filing of the *Petition for Reconsideration* and which further support the Guild's contentions that reconsideration of the *Decision* should be should be granted and a hearing designated on each of the issues raised by the Guild.

THE PENDING CRIMINAL CHARGES

At the time of the filing of the Guild's *Reply to Opposition to Petition for Reconsideration* on February 3, 1989 (the "*Reply*"), the second trial¹ of criminal charges against GAF and its Vice Chairman and Chief Administrative Officer, James T. Sherwin, in the U.S. District Court for the Southern District of New York had just begun. Developments occurring during the second trial underscore the necessity of full Commission scrutiny of the character of the present licensee as well as that of Mr. Heyman, to whom control of the licensee would pass upon consummation of the proposed leveraged buyout of GAF.

Mr. Heyman's Co-Conspirator Status

Perhaps the most significant fact to emerge from the second trial (at least insofar as the present proceeding is concerned) is that Mr. Heyman had been named by the grand jury as an unindicted co-conspirator in the securities fraud and record falsification schemes charged in the indictment. Although this fact apparently was not reported publicly until March 19, 1989,² it clearly was known much earlier by GAF and Messrs. Sherwin and Heyman — in all probability, long before the commencement of the first trial in December 1988, since the Government would have been obligated to disclose the identity of the unindicted co-conspirators upon the defendants' request. Even in the unlikely event that the defendants had neglected to so inquire, the fact that Mr. Heyman was named as a co-conspirator would almost certainly have been disclosed in connection with evidentiary rulings at trial.

Despite their knowledge of Mr. Heyman's having been named as an unindicted co-conspirator, the applicants have never reported that fact to the Commission. Their failure not only violated Section 1.65(a) of the Commission's Rules, 47 C.F.R. § 1.65(a) (1988), but also

1. As previously noted, *Petition* at 3, the first trial had ended in a mistrial.

2. N.Y. Times, Mar. 19, 1989, §1, at 23, col. 1. See also Wall St. J., Mar. 23, 1989, at A3.

breached the applicants' duty of honesty and candor in their dealings with the Commission. Most egregious is the assertion in the *Opposition to Petition for Reconsideration* (the "*Opposition*"), that "Mr. Hoyman is not subject to the indictment,"³ which, while literally true, is a less than candid disclosure in a proceeding in which Mr. Hoyman's character is at issue.⁴

The Commission clearly is entitled to consider the effect upon an applicant's character and fitness to be a broadcast licensee of his participation in a criminal conspiracy involving conduct which reflects adversely on the crucial character traits of truthfulness and reliability.⁵ Disclosure to the Commission — and to the Guild as well — of the fact of Mr. Heyman's unindicted co-conspirator status thus was necessary in order to maintain "the continuing accuracy and completeness of information furnished in [the] pending application," as well as to comply with the duty to report any "substantial change as to any other matter which may be of decisional significance."⁶

It is clear that the applicants' duty of disclosure is a continuing one despite the November 14, 1988 *Decision*, since the application continues to be regarded as "pending" under Rule 1.65(a). The applicants cannot presently act in reliance upon the *Decision* in light of their continuing failure to inform the Commission of salient facts. Indeed, if — as is highly probable — the applicants were aware of Mr. Heyman's unindicted co-conspirator status well before the *Decision* was issued, the Commission's action should be regarded as having been fraudulently procured *ab initio*.

Not content with maintaining silence concerning Mr. Heyman's status, the applicants, in seeking to avoid application of the Commission's *Character Policy*, have resorted to less than candid characterizations of the criminal case. The Guild has previously noted the applicants'

3. *Opposition* at 8 n.5.

4. The Guild has previously pointed out that the applicants have misdescribed to the Commission the nature of the issues in the criminal proceeding. *Reply* at 5 & n.17; *Petition* at 6; Letter from David M. Rice to Chairman Dennis R. Patrick, Aug. 12, 1988, at 2 n.2.

5. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C. 2d 1179, 1195-98 (1986) ("*Character Policy*").

6. 47 C.F.R. § 1.65(a) (1988).

failure to inform the Commission of the full scope of the criminal charges in the one-page amendment to the instant applications filed July 27, 1988,⁷ as well as their subsequent misrepresentation of the nature of those charges in their *Opposition*.⁸ The subsequent public disclosure that Mr. Heyman is an unindicted co-conspirator, however, makes clear that the applicants knew much more than what the Guild characterized as "indications"⁹ that Mr. Heyman may have been involved in the illicit scheme charged in the indictment.

Put in simple terms, the applicants have been and are engaged in a continuing attempt to escape Commission scrutiny of their alleged criminal wrongdoing in connection with the proposed transfer of control. In furtherance of that end, they filed the instant proceeding at an extremely premature stage,¹⁰ they have withheld potentially decisionally significant information, and they have mischaracterized the criminal proceeding in their filings with the Commission. All of these matters require full Commission scrutiny before the proposed transfer of control can properly be authorized.

Evidence of Wrongdoing Reflecting on Truthfulness and Reliability

At the second trial of the criminal charges against GAF and Mr. Sherwin, considerable documentary and testimonial evidence was adduced in support of the Government's charges against GAF and Mr. Sherwin. Among other matters that arose at the trial, there was testimony from both prosecution and defense experts relating to the Government's contention that a key document had been altered by GAF.¹¹ There also was testimony from Boyd L.

7. *Petition* at 6.

8. *Reply* at 5. *Cf. Opposition* at 8 n.5.

Jefferies, the head of a California stock trading firm, and James T. Melton, his firm's head trader, concerning the stock transactions executed by the Jefferies firm for GAF which the indictment charges were carried out in order to manipulate the price of Union Carbide stock, as well as documentary evidence of the telephone calls and stock transactions about which Messrs. Jefferies and Melton testified.¹² Neither Mr. Heyman nor Mr. Sherwin were called to testify.

Jury deliberations began on March 10, 1989 and continued for 12 days, after which the court declared a mistrial owing to the jury's inability to reach a unanimous verdict. Although the jury had been deadlocked 11-1 on March 18 (reportedly in favor of conviction¹³), the jurors ultimately were split three ways, with one or more being undecided. The Government has requested a retrial in April.¹⁴

Although the criminal trial has not yet culminated in a definitive verdict, the Commission may, and should, take official notice of the evidence presented thereat. That evidence is sufficient to warrant the Commission's refusing to allow the transfer of control of GAF Broadcasting to go forward until the criminal charges — and their impact on the character of the parties hereto — can be resolved. While it may conserve resources for the Commission to avoid unnecessary duplication of effort by waiting for the criminal trial to conclude, it does not follow that a transaction which may be difficult or impossible to undo should be allowed to proceed while so dark a cloud hangs over the parties' heads.

Moreover, the Commission should not lose sight of the radically different standards and burdens of proof which apply in criminal trials and in Commission proceedings. If 11 of 12 jurors could be convinced beyond a reasonable doubt of the defendants' guilt, even without being permitted to draw a negative inference from defendants' silence, it is reasonable to conclude that there is sufficient cause for Commission concern under the public interest standard it administers. Indeed, because of the differences in standards and procedures, even an acquittal

12. See, e.g., N.Y. Times, Feb. 7, 1989, at D5, col. 1; *id.*, Feb. 8, 1989, at D2, col. 5; *id.*, Feb. 9, 1989, at D4, col. 3; *id.*, Feb. 28, 1989, at D1, col. 6; *id.*, Mar. 1, 1989, at D2, col. 5.

13. Nat'l L.J., Apr. 3, 1989, at 6, col. 1; see N.Y. Times, Mar. 24, 1989, at D10, col. 5. As the jury expressly declined to disclose which way it had been leaning, these reports are obviously less than authoritative.

14. Nat'l L.J., Apr. 3, 1989, at 6, col. 1.

in a criminal case should not invariably bar Commission inquiry.¹⁵ Ample power exists for the Commission to waive or create an exception to its *Character Policy* to accommodate such cases as this one.

FALSE CERTIFICATION OF AVAILABILITY OF ASSETS

Recent press accounts and statements issued by GAF have further confirmed the fact that the certification in the application that "sufficient not liquid assets are on hand or are available from committed sources to consummate the transaction and operate the facilities for three months," and that the transferee "has a reasonable assurance of a present firm intention" on the part of each supplier of capital and each lender¹⁶ were false when made. As recently as within the last ten days, a GAF spokesman was quoted as stating that "he expected the financial arrangements [for the leveraged buyout] to be completed by the end of next week."¹⁷ That statement, coming precisely one year after the filing of the instant applications and just over five months since the latest amendment thereto, underscores the extreme lengths to which the applicants have gone to secure Commission approval without disclosure of the full particulars of the proposed transaction.

It should be emphasized that the deficiencies in the applications have been substantial and serious, not merely omissions of minor details. Thus, although the applicants had contended that full particulars of the transaction had been supplied when the original application was filed in March 1988, the October 21, 1988 amendment reflected major revisions to both legal and financial aspects of the transaction. And even after that amendment was filed, major financial questions have remained unsettled, as subsequent reports have disclosed.

15. If the Commission's *Character Policy* were to be applied so inflexibly that the existence of a reasonable doubt in the mind of a single juror could absolutely preclude Commission inquiry, the *Policy* would clearly violate the Communications Act.

16. Application of Hayman, et al., at 7.

17. Wall St. J., Mar. 23, 1989, at A3.

ATTACHMENT 10

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DUPLICATE

APR 13 1989

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of the Application of

SAMUEL J. HEYMAN, et al., Shareholders of
GAF CORPORATION,

For Consent To Transfer of Control of
GAF BROADCASTING COMPANY, INC., Licensee
of Station WNCN (FM), New York, New York, to
NEWCO HOLDINGS, INC.

File No.
BTCH-880322GP

In the Matter of the Application of

GAF CORPORATION

For Consent To Pro Forma Transfer of
Control of **GAF BROADCASTING COMPANY, INC.,**
Licensee of Station WNCN (FM), New York,
New York, to

DORSET INC.

File No.
BTCH-880322GG

To: Chief, Mass Media Bureau

OPPOSITION

On March 31, 1989, The Listeners' Guild, Inc. ("Listeners' Guild") filed a "Motion for Leave to File Supplement to Petition for Reconsideration" ("Motion"), a "Supplement to Petition for Reconsideration" ("Supplement"), and an "Emergency Request for Stay" ("Stay Request"). GAF Broadcasting Company, Inc., licensee of WNCN(FM) in New York City, by its attorneys, opposes all three pleadings.

The three pleadings are the most recent installments in the Listeners' Guild ten-year harassment of GAF. They grow out of the highly publicized allegations of securities laws violations in New York against GAF Corporation and one of its officers, James T. Sherwin, which have, to date, resulted in two mistrials. The pleadings are based entirely on a selective and inaccurate reading of newspaper accounts of the trials, speculation, and innuendo. The core assertion, that the Commission should consider the evidence presented at those trials, even though there has been no verdict (Supplement, p. 5) and, indeed, even if the case should be retried for a third time and result in an acquittal (*id.* at 5-6), is facially wrong and contrary to the Commission's rules and procedures for dealing with character qualifications.^{1/} The three pleadings are so laced with slur, innuendo, and misstatement that the Commission may wish to consider their purpose and whether or not they are scandalous within the meaning of Section 1.52 of the Commission's Rules.

Listeners' Guild Allegations Concerning the Trial

1. Allegedly based on two newspaper accounts, counsel for the Listeners' Guild says that GAF concealed from the Commission "the most significant fact . . . that Mr. Heyman had been named by the grand jury as an unindicted co-conspirator." This "most significant fact" is pure fiction, for the grand jury never named Mr. Heyman as an unindicted co-conspirator. Copies of the two newspaper articles cited by counsel for the Listeners' Guild are

^{1/} Character Qualifications, 102 F.C.C.2d 1179, 1196-97, 1205 (1986).

attached (Attachments 1 and 2). One of them has nothing to do with GAF. The other squarely confirms the falseness of the allegation made by counsel for the Listeners' Guild:

"GAF's chairman, Samuel J. Heyman, was not charged with any wrongdoing or named in the indictment. Moreover, the judge instructed the

is the totally unsupported speculation that 11 of 12 jurors favored convicting both Mr. Sherwin and GAF (Supplement, p. 5).^{3/} Mistrials were declared in both trials and no such determinations have been made.

False Certification

Counsel for Listeners' Guild again renews^{4/} his contention that Mr. Heyman lacks the financial resources to consummate a leveraged buyout of GAF and, therefore, the "reasonable assurance" certification given by Mr. Heyman was false. This argument, based on newspaper accounts, simply ignores the widely reported fact that, on March 29, two days before the three Listeners' Guild pleadings were filed, the LBO was consummated.

Stay

The Listeners' Guild first filed in opposition to the proposed LBO a year ago.^{5/} It could have requested a stay at any time. It did not. Now, three days after the LBO was closed, it makes an "emergency" request for stay. Even if there were a serious character issue with respect to Mr. Heyman, and there is not, there would be no justification for a stay. Mr. Heyman and the

^{3/} Counsel for Listeners' Guild, it should be noted, has not felt impelled to bring to the Commission's attention the Wall Street Journal April 4, 1989 report (page B8) headed "Jurors in GAF Trial Say Six of 12 Favored Acquittal." (Attachment 3).

^{4/} See Listeners' Guild, "Reply," 13-14 (May 19, 1988); "Petition for Reconsideration," 7-8 (December 14, 1988); "Reply to Opposition to Petition for Reconsideration," 6-7 (February 3, 1989).

^{5/} Listeners' Guild, "Petition to Deny" (April 27, 1988).

GAF management group which has joined with him in the LBO now control the licensee of WNCN, bear full licensee public interest obligations, and are fully subject to the continuing jurisdiction of the Commission.

Section 1.52

Under Section 1.52 of the Commission's Rules, an attorney who signs a pleading certifies that, "to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay." "An attorney may be subjected to appropriate disciplinary action, pursuant to §1.24, for a willful violation of this rule or if scandalous or indecent matter is inserted." (Emphasis added.)

A fair question can be raised as to whether a pleading based solely on newspaper stories can be said to provide the "good ground" expected of an attorney. The question becomes more serious if the attorney's reading of the newspaper stories is so selective and biased as to not even fairly reflect their content. The bald assertions by an attorney that an individual, reported in the press to have neither been indicted nor charged with wrongdoing, participated in a criminal conspiracy, and that the testimony in a proceeding which has resulted in two mistrials and no verdict has "substantiated the charges in the indictment," cannot be supported by good ground. Similarly, the unsupported speculation that 11 of 12 jurors favored convicting both Mr. Sherwin and GAF (Supplement, p. 5), passes the bounds of responsible, vigorous advocacy and is scandalous.

Counsel for the Listeners' Guild charges GAF and Mr. Heyman with breach of duty of honesty and candor (Motion, p. 2), concealment (id.), false certification to the Commission (id. at 3), less than candid disclosures and characterizations (Supplement, p. 3), mischaracterization (id. at 4), and intentional false certification (id. at 7). The charges of breach of duty of honesty and candor and less than candid disclosures are directed not only at GAF and Mr. Heyman, but at pleadings certified by undersigned counsel.

While most of the cases in which the Commission has drawn the line between vigorous advocacy and improper attorney conduct have involved unsupported charges against the Commission itself, Television Broadcasters, Inc., 1 F.C.C.2d 970 (1965) involved unsupported allegations that an applicant's survey was based on false information. In particular, the survey was characterized by counsel, without support, as "contrived," "of highly questionable veracity," and said to reflect "apparent fraudulent misrepresentations." Id. at 973. These allegations, the Commission said, "exceed the bounds of proper advocacy," conduct by counsel which the Commission "expressly disapprove[s]" and "will not countenance." "No licensee may lightly place into question the character qualifications of another licensee, and their counsel can be accorded no greater latitude in this area." Id.

There is no apparent reason why counsel for the Listeners' Guild, a sophisticated communications law practitioner, should be held to any lesser standard. And, since his pleadings allege,

without support, specific criminal conduct, the issue they present is far more serious than the conduct condemned by the Commission in Television Broadcasters.

In another case, GT&E Communications, Inc. alleged, in a petition for reconsideration, without factual support, that "the actions of the Commission in this matter to date have been taken with such patent disregard of any standard of fairness -- let alone due process -- that GTEC and GTI have no confidence that this petition -- no matter what its merit -- will receive favorable consideration," and that the Commission's unfairness "reflects the staff's prejudice," TeleCable Corp., 18 F.C.C.2d 476, 477 (1969). The Commission said that "unfounded, intemperate and irresponsible charges cannot be countenanced." Id. Further, it said, "[T]he action of . . . [the] attorneys in signing a pleading which contains the unsubstantiated charges set forth above falls far below the standard of conduct we expect of practitioners before this Commission." Id. at 478.^{6/}

^{6/} Also in 1969, the Commission directed its staff to conduct a thorough investigation to determine whether its processes had been abused by the filing of unauthorized pleadings for the purpose of "delay or obstructionism" and to determine whether a separate proceeding or other action against a party, or discipline proceedings against the party's attorneys (under

The Commission's distaste for being called unfair, and its staff's distaste for being called prejudiced, are understandable. These allegations, however, it is respectfully suggested, were no more intemperate or irresponsible than the unfounded charges of criminal conduct made against Mr. Heyman by counsel for the Listeners' Guild.

In 1976, the Commission agreed with its administrative law judge that unsupported allegations of political pressure being brought to bear on the Commission were "scandalous," City of New York Municipal Broadcasting System, 38 F.R.2d 1058, 1060 (ALJ, 1976), 39 R.R.2d 102 (1976). Offensive as such unsupported allegations may be, they are certainly no more offensive than those leveled by counsel for Listeners' Guild.

Two years ago, in Spanish International Communications Corp., 2 F.C.C. Rcd. 3336, 3342 n.4 (1987), the Commission declined to strike a pleading said to contain "scandalous" material in violation of Section 1.52 because the allegations made in the challenged pleading "stopped short of suggesting illegal conduct, and therefore did not exceed the bounds of the law." Id. The pleadings filed by counsel for the Listeners' Guild not only do not stop short of suggesting illegal conduct, they affirmatively assert criminal conduct.

If the administrative processes of the Commission are to be respected, they cannot be permitted to become the free repository

[REDACTED]

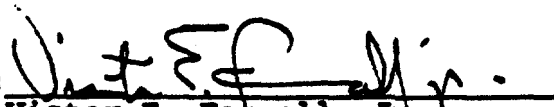
bend over backwards to permit the fullest and most vigorous presentations by contending parties. There is, however, a limit. The Commission may wish to consider in this case whether that limit has been crossed.

Conclusion

For all of the reasons set forth above, it is respectfully requested that the Motion, Supplement, and Stay Request filed by the Listeners' Guild be denied.

Respectfully submitted,

GAF BROADCASTING COMPANY, INC.,

By: 
Victor E. Ferrall, Jr.

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1001 Pennsylvania Avenue, N.W.
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Its Attorneys

April 13, 1989

Judge, Bucking Guidelines, Sets Short Terms for 2 Mothers

BALTIMORE, March 18 (AP) — A Federal judge on Thursday reduced prison terms in the drug convictions of two mothers of small children, saying that the United States Sentencing Commission did not consider cases when it developed its guidelines.

Fredrick N. Scahill, 41, of the Federal N. Scahill, refused to send the women, Patty Jane Sheriff, 28 years old, and Diana Sheriff, 32, to prison for the 10-year terms required under the commission's guidelines.

The women, who are sisters-in-law, their husbands and three other people were convicted for participating in a family drug ring here.

1, 1967, and judges and defense attorneys nationwide have criticized them for leaving discretion and reducing judicial discretion.

Federal judges generally are bound by the guidelines, which the Supreme Court has upheld, but Judge Scahill said the commission "did not adequately take into account the family situation of mothers who are the sole custodians of their small children."

No to Foster Care

Patty Jane Sheriff said the judge she was seeking foster care for her three children, who are ages 3, 7 and 18. She said she has no family other than her husband, who was sentenced to prison Thursday.

"I am not going to put them in foster care so she can go to jail," Judge Scahill said.

The judge ordered Mrs. Sheriff to spend a month in a local jail and then serve three years on supervised release. He also delayed the start of her jail term until June 30 so Mrs. Sheriff could find someone to care for her children.

At the recommendation of Federal prosecutors, Judge Scahill also reduced the sentence of Diana Sheriff, who has a 5-year-old child. He sentenced her to three months in prison, followed by 90 days of "intermittent" imprisonment and three years of supervised release.

David C. Sheriff, 37, Diana Sheriff's husband, was sentenced to eight years in prison and then five years of supervised release for leading the drug ring. George Sheriff, 26, Patty Jane's husband, was sentenced to five years and three months in prison and three years of supervised release.

Three others were sentenced to prison terms of 2½ years to 8½ years.

Dogs Kill 7 Antelope in Zoo

ST. LOUIS, March 18 (AP) — Seven antelope were killed Thursday by a pack of dogs that got into their compound at the St. Louis Zoo, the authorities said. Security guards discovered the attack on the herd of eight South African springbok antelope at about 6 A.M.

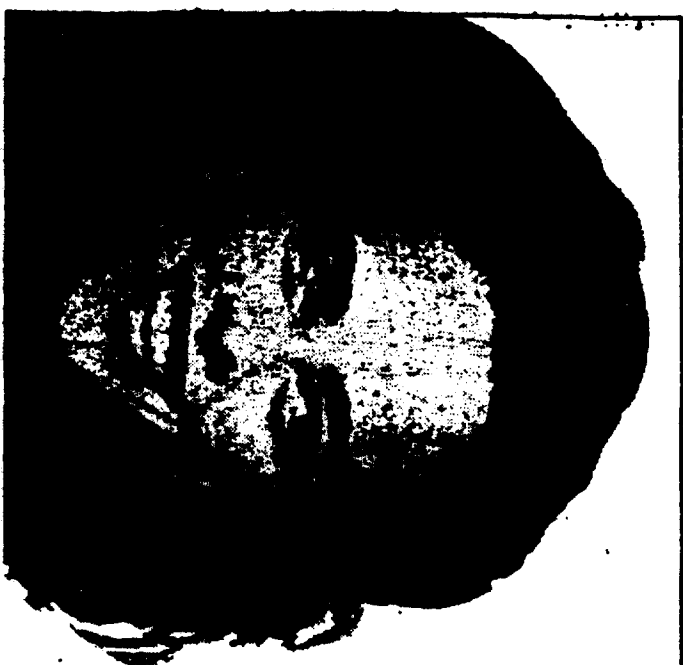
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MISSSES AND PETITES

GAF Stock-Manipulation Case Declared Mistrial; U.S. Vows to Seek Third Trial

By ANN HAGEDORN
And BETTY WONG

Staff Reporters of THE WALL STREET JOURNAL

NEW YORK—After 12 days of jury deliberations and six weeks of testimony, the criminal stock-manipulation case of GAF Corp. and its vice chairman James T. Sherwin ended in a mistrial.

The jurors sent a note to the judge saying they were no longer deadlocked in the 11-1 split they had been trying to break since last weekend. Instead, they said they were divided three ways: guilty, not guilty and undecided.

Judge Mary Johnson Lowe then sent a note back asking if more deliberations would be helpful; the panel had spent 93 hours deliberating. Seven on the jury replied no, and the judge then declared a mistrial, the second one in the case.

Immediately, Assistant U.S. Attorney Carl Loewenson Jr. said, "We will try the case again." And at a news conference later in the day, U.S. Attorney Benito Romano confirmed that decision. "We still have a great deal of faith in the evidence in this case. The right thing to do is to proceed again," Mr. Romano said.

GAF's lead defense attorney Arthur L. man, looking weary yet relieved, said, "If a jury cannot agree despite 12 days of patient deliberations, I believe it's a waste of resources to continue to try this case."

Last July, the government charged GAF, the Wayne, N.J., specialty chemical maker, and Mr. Sherwin with illegally attempting to manipulate the common stock of Union Carbide Corp. in advance of GAF's planned sale of a large block of the stock in November 1986.

The 10-count indictment included charges of stock manipulation, securities fraud, wire fraud and conspiracy. The first trial ended in a mistrial after four weeks when a federal judge found that a prosecutor improperly, but unintentionally, withheld a document.

The case was considered an important first test of the government's ability to convince a jury of allegations linked to the insider-trading investigation that focused initially on former arbitrator Ivan F. Boesky. Boyd Jefferies, the former brokerage chief who was the government's star witness in the GAF trial, has helped the government bring criminal charges in separate cases against takeover speculator Salim B. Lewis and corporate raider Paul Bilzerian.

Since the jury announced its deadlock Saturday night, defense attorneys had asked the judge numerous times to declare a mistrial because, the attorneys said, the jurors might feel pressured to come to a hasty decision.

Mr. Sherwin said: "My family and I are all completely exhausted. I'm not going to even think about (a third trial.) I plan to go back to work tomorrow."

Mr. Romano said he couldn't comment on whether there might be a settlement in lieu of a new trial. He said, "It's a new ballgame now," and the government would have to re-examine the case. The indictment was brought while Rudolph Giuliani was U.S. attorney. He resigned in Janu-

In the courtroom, a GAF spokesman released a written statement, saying, "After two lengthy and costly trials and 12 days of jury deliberation, we would hope that the court's action today would now put an end to this case."

GAF's chairman Samuel J. Heyman was not charged with any wrongdoing or named in the indictment. However, the judge instructed the jury to consider the executive as an unindicted co-conspirator so any testimony concerning Mr. Heyman could be considered in the jury's deliberations.

The government alleged during the trial the testimony showed he was a co-conspirator. Mr. Heyman never appeared in court, either as a witness or a spectator, during the six-week trial or during jury deliberations. He could not be reached for comment.

Common shares of GAF closed at \$52, unchanged, in composite trading on the New York Stock Exchange yesterday. The company is in the midst of a \$1.47 billion leveraged buy-out led by Mr. Heyman. A spokesman said he expected the financial arrangements to be completed by the end of next week.

The Jefferies connection brought attorneys for Mr. Lewis and Mr. Bilzerian to the GAF courtroom throughout the trial to scrutinize the strategy and style of the lawyers and to monitor the testimony of Mr. Jefferies and others.

In April 1987, after pleading guilty to two felony counts of breaking securities laws, the founder and former chairman of the Los Angeles brokerage firm Jefferies & Co. began cooperating with the government. Mr. Jefferies is expected to testify at the trial of Mr. Bilzerian in May and at Mr. Lewis's trial in September.

Stanley Arkin, the defense attorney representing Mr. Lewis, said, "When a jury wrestles for nearly two weeks over a case the government (in opening statements) called simple, it shows that this is a case that doesn't smell, taste or feel like a criminal case."

The jury sent a note to the judge after the verdict, saying none of the jurors would respond to inquiries from reporters.

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